

## **REMARKS**

Favorable reconsideration of this application in light of the preceding amendments and the following remarks is respectfully requested.

No claims having been cancelled and claims 11-13 added, the Applicants respectfully submit that claims 2-13 are pending in the present application and remain properly under consideration with claims 2, 10 and 11 being presented in independent form.

Support for the new claims 11-13 reflected above may be found in Examples 1-6 in the Specification at pages 6-8.

### **Claim Objections**

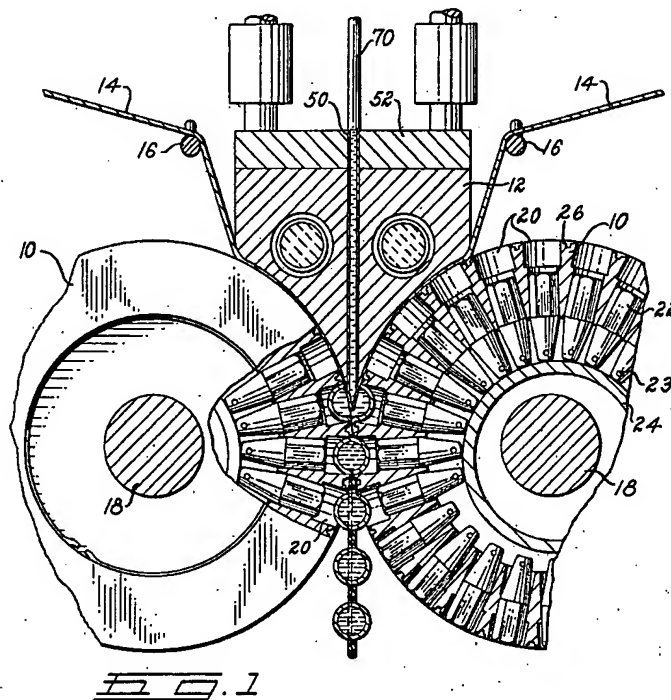
Claim 8 stands objected to for the use of the term “preferentially.” Action at 2. The Applicants respectfully contend that the amendments to claim 8 reflected above are sufficient to overcome this objection.

The Applicants respectfully request, therefore, that this objection be reconsidered and withdrawn accordingly.

### **Rejections under 35 U.S.C. § 103**

Claims 2 and 4-10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Haman et al.’s U.S. Patent No. 4,656,092 (“Haman”). The Applicants respectfully traverse this rejection for the reasons detailed below.

The Applicants respectfully contend that, contrary to the representation in Haman, col. 2, lines 45-49, and the Action at 2, the “soft gelatin capsule shell” as taught in Haman is *not seamless*. The Applicants respectfully note that Haman incorporates certain U.S. patents by reference in lieu of providing specific disclosure regarding the production of the capsule shell. Haman, col. 2, lines 62-66. As reflected in the most recent of the incorporated patents, U.S. Patent No. 2,318,718 (“the 718 patent”) to Scherer, manufacturing the capsules involves bringing together two separate gelatin layers 14 between two die rolls during which the capsule is formed, filled and sealed. Figure 1 of the ‘718 patent, reproduced below, illustrates Scherer’s method.



The formed capsules are then cut from the sheet to obtain the individual capsules.

Although steps may be taken to reduce any surface deformation associated with the seam formed between the two hemispherical portions of separate gelatin sheet material, an

equatorial seam is undeniably present in the final capsule structure. Accordingly, neither Scherer's filled capsules, nor Haman's target shooting capsules, are "seamless" as required by each of the independent claims.

Further with respect to Haman, the Applicants respectfully contend that there is no indication in Haman that the disclosed shell and filler compositions are suitable for formation of a truly "seamless" capsule. The Applicants respectfully note, for example, that Haman does not teach or suggest to one of ordinary skill in the art that modifying the basic gelatin composition with one or more PEG compounds would render it useful for the formation of "seamless" capsules. Absent such a teaching, the Applicants respectfully contend that the rather generic references to gelatin compositions suitable for use as a sheet material cannot fairly be said to teach a gelatin composition suitable for forming a truly "seamless" capsule.

With regard to the interpretation of the "can consist" phrase in the previous iteration of the claims that effectively read various of the limitations out of the claim, the Applicants respectfully maintain that the amendments to the claims reflected above are more than sufficient to remove any such ambiguity regarding the presence of PEG and/or starch in the shell material.

### CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections have been addressed and overcome, leaving the present application in condition for allowance. A notice to that effect is respectfully requested.

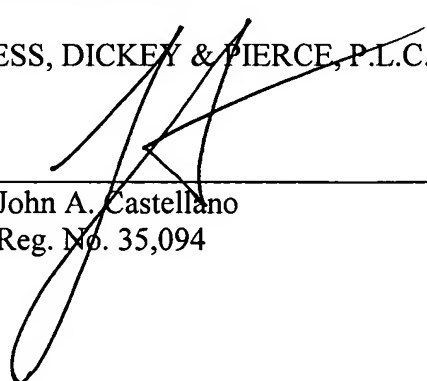
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

HARNESS, DICKY & PIERCE, P.L.C.

By:

  
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